IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11504 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DH LUHAR & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARDIK SONI ON BEHALF OF MR HARIN P RAVAL for Petitioners: 1 - 4.
MR LR PUJARI AGP for Respondent(s) : 1,
MR HS MUNSHAW for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/01/2007

ORAL JUDGMENT

1. Heard Mr.Hardik Soni, learned counsel under the authority of Mr.Harin P. Raval, learned counsel for the petitioners, Mr.L.R. Pujari, learned counsel for the

respondent No.1 and Mr.H.S. Munshaw, learned counsel for the respondent No.2.

2. Short facts necessary for disposal of the present writ application are that in relation to part of land of Survey No.248/2, non agricultural use permission was applied for and accordingly 1 Acre and 6 Gunthas of land were permitted tobe used for non-agricultural purpose under order dtd.9/1/1967. On 21/7/1982, the petitioners purchased land by a registered document and thereafter made an application to the Nagar Panchayat, Lakhtar for granting permission to construct. The said permission was accorded by the Nagar Panchayat vide their letter dtd.21/7/1982. It is to be noted at this stage that the first non-agricultural permission was for residential purposes. However, the petitioners made construction of one shed admeasuring 15 mtrs. X 9 mtrs. And a office room of the size of 15 ft. X 15 ft. by spending, as alleged by the petitioners, a sum of Rs.60,000/-. It appears that the property was purchased by a partnership and the said partnership came to be dissolved on 1/4/1990 and since thereafter, the petitioner No.4 – Arvindbhai Hargovindbhai is carrying on the business in the said premises in the name and style of Arvind Industries as

the sole proprietor. On 6/1/1994 the respondent No.2 i.e. District Development Officer, District Panchayat, Surendranagar issued a notice to the petitioners to show cause as to why the action be not taken against the petitioners for committing breach of non-agricultural use permission. The petitioners submitted their reply and showed their readiness and willingness to pay the penalty in view of the change of the user.

3. After hearing the petitioner, respondent No.2, vide his order dtd.2/4/1994 held that the petitioners had committed breach of the non-agricultural use permission and had made themselves liable for removal / demolition of the construction raised by them.

4. The petitioners preferred an appeal before the Secretary (Appeals), but as the same was dismissed on 5/9/1994, the petitioners are before this Court.

5. Learned counsel for the petitioners submits that Sec.65 relates to grant of permission for non-agricultural use, while Sec.65-A refers to the procedure to be adopted in case the occupant wishes to apply his land from one non-agricultural purpose to another non-agricultural purpose. According to him, Sec.65-B refers to use of land for bonafide industrial purpose, while Sec.66 refers to

penalty for using land without permission. His submission is that action of the petitioners may be bad because they have converted the land from one use to another use, but according to him, the petitioners can always make an application under sec.67 of the Bombay Land Revenue Code, 1879 (“the Code” for short) to the concerned Collector / District Development Officer, who can grant ex-post facto sanction. He submits that sec.67-A refers to payment of conversion tax by occupant for change of use of land in certain areas. According to him, if the petitioners had changed the use from residential to commercial, then on an application under sec.67 of the Code, Collector is entitled to pass appropriate order.

6. Mr.Pujari, learned Assistant Government Pleader for the State submits that so far as the order passed by the District Development Officer is concerned, the same is not a bad order, because till date, the petitioners had not made an application under sec.67 of the Code.

7. Mr.Munshaw, learned counsel for the respondent No.2, however, submits that for carrying out commercial activities, a person has to maintain a particular distance from the center of the road which is much larger in comparison to residential user. According to him, in the

case like present, no permission can be granted to the petitioners to put the property for commercial use, because Ribbon Development Rules have come in force. Sec.67 of the Code reads as under;-

> “Sec.67.Nothing [in sections 65, 65-A and 66] shall prevent the granting of the permission aforesaid on such terms or condition as may be prescribed by the Collector, subject to any Rules made in this behalf by the State Government.”

8. Sections 65, 65-A and 66 though authorise the appropriate authority to pass necessary order, but Sec.67 of the Code has over-ridding effect over sections 65, 65-A and 66 of the Code. When the section provides that nothing contained in sections 65, 65-A and 66 shall prevent the granting of the permission by the Collector, then such permission can always be obtained by a party . Sec.67 does not say that in each case permission is to be obtained before change of the user. The language does not put such a bar on an application nor puts embargo on the powers of the Collector for granting ex-post facto sanction. In a case where there is breach of sections 65,

65-A and 66 of the Code. It is, however cannot be disputed that the land cannot be put to non-agricultural use without permission of the Collector and the Collector is empowered to resume the land if it is so used without such permission, but in granting ex-post facto permission for non-agricultural use or change of the use from one non-agricultural purpose to another non-agricultural purpose, the Collector is empowered to consider application, grant the same and may also impose appropriate fine.

9. So far as the order passed by the District Development Officer and confirmed by the State are concerned, no fault can be found with the said order, because, the said orders have been passed by the authorities, after taking into consideration the legal position and the totality of the circumstances, so also the manner in which the land has been put to use from one non-agricultural purpose to another non-agricultural purpose. The submission made by the petitioners that the petitioners are entitled to make an application under sec.67 of the Code, in fact, deserves consideration. Even while dismissing the petition I grant liberty to the petitioners to make an application under sec.67 of the Code to the

concerned Collector / District Development Officer for for grant of permission for change of the user i.e. from one non-agricultural purpose to another non-agricultural purpose. It is, however, made clear that if the petitioners are advised to make such an application, they they would join the present respondent No.2 - District Panchayat, Surendranagar, as party to the proceedings, so that appropriate objections, as argued by Mr.Munshaw, learned counsel for the respondent No.2 herein, can be raised. After giving due opportunity of hearing to the parties, the Collector / District Development Officer shall pass speaking order into the rights and entitlement of the petitioners. It is, however, made clear that if the Collector / District Development Officer grants ex-post facto permission / sanction, then he would be entitled to impose penalty in accordance with law. It is also made clear that while deciding the application so filed under sec.67 of the Act, the Collector / District Development Officer shall take into consideration the Ribbon Development Rules. The petition stands dismissed. Rule is discharged. Interim Relief, if any, is vacated. However, it is made clear that if within one month from today, the petitioners make an application under sec.67 of the Code

to the Collector / District Development Officer, then till final disposal of the said application, the construction raised by the petitioners shall not be removed / demolished.

(R.S. GARG, J.)

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